

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RICHARD PIERCE SUMNER, JR.,

Plaintiff,

v.

EXCEL TEMPS SERVICES,

Defendant.

Case No. 11-cv-2-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff Richard Pierce Sumner, Jr.'s motion for leave to proceed *in forma pauperis* (Doc. 2) and motion for service of process at government expense (Doc. 4).

A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1). Nevertheless, a court can deny a qualified plaintiff leave to file *in forma pauperis* or can dismiss a case if the action is clearly frivolous or malicious or fails to state a claim. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii). The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). An action fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When assessing a petition to proceed *in forma pauperis*, a district court should inquire into the merits of the petitioner's claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

The Court is satisfied from Sumner's affidavit that he is indigent. Furthermore, there is no indication that Sumner's claim is frivolous. Therefore, the Court **GRANTS** Sumner's motion

for leave to proceed *in forma pauperis* (Doc. 2)

The plaintiff having been granted leave to proceed *in forma pauperis*, the Court must order service of process by a United States marshal or deputy marshal or other specially appointed person. Fed. R. Civ. P. 4(c)(3). Accordingly, the Court also **GRANTS** Sumner's motion for service of process at government expense (Doc. 4)

If the plaintiff wishes the United States Marshal Service to serve process in this case, the Court **DIRECTS** the plaintiff to provide to the United States Marshal Service the summons issued in this case, the appropriately completed USM-285 forms and sufficient copies of the complaint for service.

The Court further **DIRECTS** the United States Marshal, upon receipt of the aforementioned documents from the plaintiff and pursuant to Federal Rule of Civil Procedure 4(c)(3), to serve a copy of summons, complaint and this order upon the defendants in any manner consistent with Federal Rule of Civil Procedure 4, as directed by the plaintiff. Costs of service shall be borne by the United States.

IT IS SO ORDERED.

DATED: January 11, 2011

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE